

REMARKS

Claims 1-12 and 14-84 are pending in the application. Claim 13 has been canceled by the present amendment, and claims 40, 55-58 and 71 are currently withdrawn from consideration. Claim 1 has been amended to specify that, within the claimed implant, each of the cells in the plurality of cells has a plurality of undulating elements. Claim 19 has been amended in consideration of antecedent basis. Claim 59 has been amended to specify that the cells of the first and second biocompatible films are uniformly patterned. No new matter has been added.

35 U.S.C. § 112, ¶ 2

Claims 1-12 and 14-25 were rejected as “being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention” (Office action at page 2). More specifically, the Examiner states, “[i]n regard to claim 1, it is unclear in the claim what are the two factors use (*sic.*) to determine the surface area ratio.”

This ground for rejection is respectfully traversed. Applicant contends that the metes and bounds of claim 1 would be apparent to one of ordinary skill in the art upon reading the specification. Each of the implants exemplified in Figures 6, 8, 9, and 10 is accompanied by the equation for calculating the surface area ratio, and the calculations are performed in each instance. The Examiner's attention is also kindly directed to the specification at page 13, lines 13-22, where Applicant describes the process for calculating the surface area ratio. As the metes and bounds of claim 1 are clear, Applicant respectfully requests withdrawal of this ground for rejection.

35 U.S.C. § 102(b)

Claims 1-12 and 14-25 were rejected as being anticipated by Della Valle *et al.* (U.S. Patent No. 5,658,331; herein “Della Valle”).

In view of the present amendment of claim 1, Applicant asks the Examiner to reconsider and withdraw this ground for rejection. Della Valle described “biocompatible membranes ...

characterized by containing an ordered series of holes of a constant size" (Abstract), and a regular array of round "holes" is clearly illustrated in the figures presented (*e.g.*, see Fig. 1a).

As noted above, claim 1 has been amended to specify that the implant claimed includes a plurality of cells, "wherein each of the cells in the plurality of cells has a plurality of undulating elements". As Della Valle's implant does not include cells having a plurality of undulating elements, Della Valle cannot anticipate the present implant. The test for anticipation is a test of identity, and Della Valle's membrane is not identical to the implant now claimed. As claims 2-12 and 14-25 depend, or ultimately depend from claim 1, they incorporate the limitation of undulating elements by reference and cannot, therefore, be anticipated by Della Valle.

Claims 26-39, 41-54, 59-70, and 72-84 were rejected as being anticipated by Lommen *et al.* (U.S. Patent No. 4,985,036; herein, "Lommen") (Office action at page 3). The Examiner states:

Lommen *et al.* disclosed a non-woven tissue implant having a first and second porous biocompatible film with plurality of cells, wherein the thickness of the implant is less than about .015 inches as claimed (Abstract, column 5, lines 20-67 and column 6 lines 1-62).

Among the claims rejected, claims 26 and 59 are independent claims, and we consider them in turn. Claim 26 covers an implant in which the first film and/or the second film are axially oriented (orientation is described in the specification at, for example, pages 6, 12, and 13, and in Example 1). Lommen does not teach or suggest an axially oriented film, and therefore cannot anticipate claim 26 or the claims that depend therefrom.

Claim 59 covers an implant in which the cells of the first and second biocompatible films are uniformly patterned. As described and illustrated in Lommen (*see, e.g.*, Fig. 1), the pores are microporous and macroporous, and are not uniformly patterned. As Lommen's material is not identical to that required by present claim 59 or any of the claims that depend therefrom, Lommen cannot anticipate claims 59-70 or 72-84.

In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections based on Della Valle and Lommen.

Applicant : Peter Gingras
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Enclosed is a check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: May 1, 2006

A handwritten signature in black ink, appearing to read 'Lee Crews', is written over a horizontal line.

Lee Crews, Ph.D.
Reg. No. 43,567

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906